

S198387

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

JULIE VANDERMOST,

Petitioner,

v.

**DEBRA BOWEN, SECRETARY OF STATE OF
CALIFORNIA,**

Respondent.

Intervention Requested Pursuant to Cal. Const., art. XXI, § 3, subd. (a)
and Code Civ. Proc., § 387

**MOTION TO INTERVENE AND FOR LEAVE TO FILE
PRELIMINARY OPPOSITION**

**[Filed With (Proposed) Preliminary Opposition to Petition for Writ of
Mandamus or Prohibition]**

JAMES J. BROSNAHAN (SBN 34555)
GEORGE C. HARRIS (SBN 111074)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone: 415.268.7000

BENJAMIN J. FOX (SBN 193374)
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200

Attorneys for
CITIZENS REDISTRICTING COMMISSION

The Citizens Redistricting Commission respectfully seeks leave to intervene pursuant to Code of Civil Procedure section 387 and to file the concurrently submitted [Proposed] Preliminary Opposition to Petition for Writ of Mandamus.

The Commission is an independent, non-partisan constitutional body entrusted with authority for drawing district lines following the U.S. Census, through “an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const., art. XXI, § 2, subd. (b).) That process—an extraordinary, eight-month effort—culminated in the certified State Senate districts now being challenged in this second petition by Julie Vandermost.

Article XXI of the California Constitution vests in the Commission “the sole legal standing to defend any action regarding a certified final map”—which necessarily includes the current Petition. (Cal. Const., art. XXI, § 3, subd. (a).) The Petition asserts unambiguously that it is an action challenging “the validity of” the certified Senate maps. (Pet. at 22.) As such, the Commission is a real party in interest here.¹

Vandermost’s current Petition repeats many of the same arguments in her previous challenge to the certified Senate districts (Case No. S196493;

¹ The Petition argues in a footnote that the Commission “is not an indispensable party” because it “is only responsible for the defense of legal challenges concerning the constitutionality or legality of certified maps for the State Senate.” (Pet. at 5, fn. 1.) Not so. Article XXI, section 3, vests in the Commission sole legal authority “to defend *any* action *regarding* a certified final map” (Cal. Const., art. 3, subd. (a).) That grant of authority—unambiguous and intentionally broad—applies to any challenge that seeks to replace the certified maps with purported alternatives, including those proffered by Vandermost or her supposed expert, Anthony Quinn.

denied by this Court on October 26, 2011).² Vandermost named the Commission as the real party in interest in her prior action, but she declined to name or serve the Commission in this action. (See Pet. at fn. 1 and its Proof of Service.) Her failure to name and serve the Commission—an indispensable party with exclusive authority to defend the certified maps—is, by itself, grounds for denying the Petition. (Code Civ. Proc., § 389, subd. (a) [a person is an indispensable party and must be joined where “he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest”]; see *Cook v. Superior Court* (2008) 161 Cal.App.4th 569, 574, 579-580 [dismissing action for failure to join the Secretary of State, which was an indispensable party in a local election dispute].)

Accordingly, Vandermost’s Petition must either be dismissed or the Commission granted leave to intervene to exercise its constitutional mandate to defend this action challenging a certified map.

² For example, both Petitions filed by Vandermost argue erroneously that (a) a referendum that is “likely to qualify” effects a stay of the certified maps; (b) Propositions 11 and 20 somehow “reverse” this Court’s precedent in *Assembly v. Deukmejian* (1982) 30 Cal.3d 638; (c) the Court may re-draw certified district lines even though the Commission’s maps are constitutional in every respect; and (d) the preferences of Vandermost’s proffered expert, Anthony Quinn, should replace the Commission’s judgment and the open, intensive, eight-month process mandated by Article XXI for drawing district lines. Each of Vandermost’s arguments is wrong and was rejected correctly by the Court in its order denying her first petition for writ of mandate.

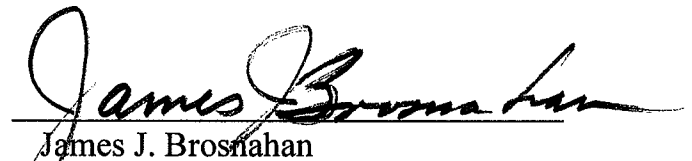
The Commission respectfully requests leave to intervene and to file its proposed preliminary opposition or, in the alternative, requests that the Petition be dismissed for failure to name as a party and to serve the Commission. If intervention is granted, any subsequent dates for briefing by the Commission should be aligned with the Secretary of State.

Dated: December 6, 2011

Respectfully submitted,

MORRISON & FOERSTER LLP

By:


James J. Brosnahan

Attorneys for CITIZENS
REDISTRICTING COMMISSION

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on December 6, 2011, I served a copy of:

MOTION TO INTERVENE AND FOR LEAVE TO FILE PRELIMINARY OPPOSITION

☐ BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system from bkeaton@mofo.com to the email addresses stated on the attached service list per instructions of the Court and in accordance with Code of Civil Procedure section 1010.6.

☐ BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(c)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

Please see attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, this 6th day of December, 2011.

B. Keaton



(signature)

SERVICE LIST

Charles H. Bell, Jr.
Bell, McAndrews & Hiltack, LLP
445 Capital Mall, Ste. 600
Sacramento, CA 95814
cbell@bmhlaw.com

Service via Email and
Overnight Delivery

Attorneys for Petitioner
Julie Vandermost

George Waters
Deputy Attorney General
Department of Justice
1300 "I" Street, 17th Fl.
Sacramento, CA 95814
George.Waters@doj.ca.gov

Service via Email and
Overnight Delivery

Attorneys for California
Secretary of State

Lowell Finley
Chief Counsel
Office of the Secretary of State
1500 11th St.
Sacramento, CA 95814
Lowell.Finley@sos.ca.gov

Service via Email and
Overnight Delivery

Attorneys for California
Secretary of State